

Esha

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 417 OF 2022

PRAWIN PAWASKAR

VS

... PETITIONER

PRAGATI PAWASKAR @ PRIYA

PAWASKAR

... RESPONDENT

Mr. Vilas P. Thali with Mr. Rajdeep Balaji, Advocates for the
Petitioner.

Mr. Raunaq Rao with Ms. Tabitha Liza Souto, Advocates for
the Respondent.

CORAM: G.S. KULKARNI, J.

DATED: 29 November 2022

ORAL ORDER.

1. This is a Petition by which, order dated 19 October 2019 passed by the learned Ad-hoc Senior Civil Judge 'B' Court, Panaji, whereby an application of the petitioner to take on record his written statement by condoning the delay in filing the written statement, has been rejected. The petitioner moved an application praying for review/recall of the said order. By an order dated 22

March 2022, such application for review/recall of the order dated 19 October 2019 has also been rejected. This order is also a subject matter of challenge in this Petition.

2. The respondent-wife filed the matrimonial proceedings in question against the petitioner on 11 September 2018 praying for a decree of divorce on the ground of cruelty. A summons on the matrimonial petition was issued to the petitioner on 16 October 2018, however, the same was returned unserved. Thereafter, an application was made for substituted service on 18 December 2018. The learned Trial Judge has observed that the suit summons was served on the petitioner on 7 May 2019 and as such, for the purpose of the present proceedings, 7 May 2019 was accepted as the date of service on the petitioner.

3. After the summons was served, the petitioner, moved an application under Order VII Rule 11 of the CPC praying for rejection of the plaint. Such application was filed on 30 July 2019, which came to be rejected by an order dated 19 October 2019. On the very same day, the petitioner intended to file his written statement, for which, the petitioner moved an application for condonation of delay praying that the accompanying written

statement be taken on record. However, by the impugned order dated 19 October 2019, the said application was rejected by the following order:

“The respondent was served with copies on 07.05.2019 and no application for extension of time to file the written statement was filed at any time and now the written statement is filed today after prescribed period of limitation without any supporting application for condonation. Hence the written statement is discarded”.

4. As noted above, the review application also came to be rejected by an order dated 22 March 2022.

5. Learned Counsel for the petitioner has submitted that the petitioner was diligently pursuing the proceedings of the application filed under Order VII Rule 11 of the CPC and was awaiting the outcome of the said proceedings. He submitted that immediately on the very day when the petitioner's application for condonation of delay was presented (i.e; on 19 October 2019) such application of the petitioner came to be rejected, when the petitioner was in fact filing his written statement with the delay condonation application.

6. I have perused the averments as made in the application as also, perused the order dated 19 October 2019 and the impugned order passed on the review application dated 22 March 2022. In my opinion, considering the facts of the case, the view taken by the learned Trial Judge is required to be stated to be extremely technical and pedantic. In the facts of the case, the reasons as set out in the delay condonation application, ought to have been accepted as a sufficient justification to condone the delay of 75 days in filing the written statement. It may be observed that the procedural provisions cannot defeat the ends of justice. In the above circumstances, in my opinion, the interest of justice would be served by setting aside the impugned orders and permitting the petitioner to file the written statement, however, in peculiar facts of the case, the same needs to be accepted on payment of costs.

7. The Petition is accordingly disposed of by the following order.

O R D E R

(a) The written statement of the petitioner is directed to be taken on the record of Matrimonial Petition No. 94/2018/B pending before the Court of Adhoc Senior Civil Judge, Panaji. The same shall be however subject to payment of costs of Rs.25,000/-,

which shall be paid to the respondent through the Advocate within two weeks from today. The Advocate for the respondent may receive the pay order as may be drawn in favour of the respondent.

(b) In the event, if the costs as directed are not paid, the impugned orders shall take effect and shall stand reviewed.

(c) All contentions of all parties are kept open to be agitated before the Trial Court.

8. Before parting, in my opinion, considering the peculiar facts of the case and considering that the marriage of the parties is solemnized on 19 September 1991, and that, from the wedlock, the parties have two issues, namely, a son, aged 30 years and a daughter, aged 25 years, peculiarly, the parties are staying in the same house/under the same roof, in such circumstances, this is a fit case that an attempt can be made by the parties to resolve the dispute by way of a mediation. The parties are hence required to be relegated to mediation considering the fact that both the children are yet to be married. The petitioner is stated to be interested in maintaining the marriage, however, as informed to the Court, the respondent-wife is stated to have certain compelling

issues and circumstances on the basis of which she appears to have maintained a plea to divorce the petitioner.

9. Be that as it may, in my opinion, considering the circumstances, it would be appropriate that the impasse ends either way, which may be possible by an effective mediation by the learned Senior Advocate of this Court.

10. Accordingly, considering the interest of children as also in the interest of parties, the Court appoints Mr. S.D. Lotlikar, learned Senior Advocate of this Court as the Mediator, who shall undertake the mediation and make his report and forward the same to this Court. The parties shall co-operate in the mediation. The learned Mediator is free to adopt the best procedure so to hear the parties personally and/or if necessary along with their respective lawyers as the learned Mediator may deem necessary. The fees of the Mediator shall be borne by the petitioner.

11. The parties are directed to appear before the learned Mediator within ten days from today at a mutually convenient date as may be fixed by the learned Mediator at the earliest possible opportunity. The notice to appear before the learned

Mediator shall be issued to the learned Advocates appearing for the parties in the present proceedings.

12. Let a report of the learned Mediator be placed on the record of the present proceedings on or before 20 December 2022.

13. The Petition is accordingly disposed of in the above terms.

14. List the Petition for compliance/direction on this issue on **21 December 2022 (First on Board)**.

15. A copy of this order be forwarded to the learned Mediator.

G.S. KULKARNI, J.

VAIGANKAR
ESHA SAINATH

Digitally signed by
VAIGANKAR ESHA SAINATH
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